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January 18, 1996

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street NW
Washington DC 20554

FCC MAIL ROOM

**RE: Definition of Markets for Purposes of the Cable Television Mandatory
Television Broadcast Signal Carriage Rules, CS Docket No. 95-178/Comments
of the Small Cable Business Association**

Dear Mr. Caton:

Enclosed for filing are the original and 14 copies of the above-captioned document and Certificate of Service. We have also enclosed a copy with a pre-addressed, stamped envelope and request that a file-stamped copy be returned to us.

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Mr. William F. Caton
January 18, 1996
Page -2-

If you have any questions or comments, please call us.

Very truly yours,

HOWARD & HOWARD



Christopher C. Cinnamon

Enclosures

cc w/enc (via Federal Express)
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Gregory Vogt
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In the Matter of)
)
Definition of Markets for Purposes of the)
Cable Television Mandatory Television)
Broadcast Signal Carriage Rules)

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CS Docket No. 95-178

**COMMENTS
OF
THE SMALL CABLE BUSINESS ASSOCIATION**

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**Eric E. Breisach
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Attorneys for the Small Cable
Business Association

Dated: January 18, 1996

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I. INTRODUCTION

The Small Cable Business Association ("SCBA") files these comments in support of the rules proposed in the *Notice of Proposed Rule Making*, CS Docket No. 95-178, FCC 95-489 (released December 8, 1995) ("*Notice*"). SCBA and its members are keenly interested in market definition and must-carry issues. Must-carry compliance represents a significant source of administrative burdens and costs for small systems. Any wholesale changes to market definition standards and procedures will increase the burdens and costs of must-carry compliance. Small cable and its subscribers will disproportionately shoulder these burdens and costs. Consequently, SCBA supports the Commission's proposal to maintain existing standards and procedures for establishing market definitions and for must-carry purposes.

SCBA is uniquely qualified to inform the Commission on the impact of the proposed rules on small cable. With over 345 members, SCBA has grown into a national voice for the interests of small cable. Over one-half of SCBA members operate systems serving fewer than 1,000 subscribers. Many of SCBA's members have benefitted from the long-awaited rate relief in the *Small System Order*.¹ More SCBA members are benefiting from the *Small System Order* as the Commission grants relief to systems and companies that deviate from the subscriber size and affiliation standards.² Still, cost pressures continue to squeeze small operators. Small cable is particularly vulnerable to cost pressures relating to programming, including the cost of must-carry and retransmission consent compliance.

¹*Sixth Report and Order and Eleventh Order on Reconsideration*, MM Docket Nos. 92-266 and 93-215, FCC 95-196 (released June 5, 1995) ("*Small System Order*").

²*Insight Communications Company, L.P.*, Memorandum Opinion and Order, CSR No. 4559-D, DA 95-2334 (November 13, 1995).

The 1992 Cable Act requires that the Commission reduce the burdens and costs of rate regulations on small systems.³ In the *Small System Order*, the Commission has demonstrated its commitment to the policy underlying this requirement by expanding the range and scope of small system relief. Retention of the current market definition standards and procedures will continue to serve this policy.

II. THE COMMISSION SHOULD RETAIN CURRENT STANDARDS AND PROCEDURES FOR DEFINING TELEVISION MARKETS.

A. BACKGROUND.

In 1993, the Commission outlined a balanced and efficient method for defining and updating television markets. The Commission concluded that updating market definitions based on revised Arbitron Areas of Dominant Influence ("ADIs") every three years satisfied the requirements of Section 534 and facilitated administrative and operational efficiency by aligning must-carry elections with retransmission consent periods.⁴ As permitted by Section 534, the Commission would modify a market definition upon a satisfactory showing by cable operator or broadcaster.⁵

Arbitron upended this plan by abandoning its measurement of broadcast television markets. To fill the regulatory void, the Commission released the *Notice*, proposing that current market definitions remain unchanged. To modify existing market definitions, the Commission

³47 U.S.C. § 543(i).

⁴*Report and Order* ¶ 39. MM Docket No. 92-295, FCC 93-144 (March 29, 1993).

⁵*Id.* at ¶ 42.

would entertain petitions as it does currently. The *Notice* also suggested but did not endorse other possible means for defining markets.

SCBA supports the Commission's proposed rule for three reasons. Adoption of the proposed rule will yield the following benefits:

- Avoid imposing disparate administrative burdens and costs on small systems.
- Minimize unnecessary changes in channel line-ups and the resultant subscriber confusion.
- Avoid placing unnecessary emphasis on arbitrary market determinations.

B. SMALL CABLE WILL BEAR DISPARATE BURDENS FROM NEW MARKET DEFINITIONS.

Adopting a new method of defining broadcast markets will change many current market boundaries. Most of these changes will occur in fringe areas between contiguous markets, areas most often served by small cable. On the other hand, more populated areas will likely experience few changes. Consequently, the burdens of market redefinition will fall disproportionately on small cable.

National system statistics demonstrate this likely impact. Larger metropolitan areas are typically served by both large systems and large operators. Of the 55.1 million cable television subscribers as of the implementation of must-carry requirements in 1993, 22.6 million (41%) were served by systems with at least 50,000 subscribers.⁶ An additional 12.9 million subscribers (23.46%) were served by cable systems with 20,000 - 49,999 subscribers and 7.5 million subscribers (13.58%) were served by cable systems with 10,000 - 19,999 subscribers.⁷

⁶Television and Cable Factbook, Warren Publishing Co., 1994, p. I-69.

⁷*Id.*

In total, 78% of cable subscribers are served by systems with 10,000 or more subscribers.⁸ Again, these systems are typically in higher density areas in or around larger metropolitan areas where the likelihood of changes in television market definitions is low.

Even though a large percentage of cable subscribers (78%) are served by larger systems, those systems only account for 10.5% of the country's 11,160 cable systems.⁹ Cable systems with 1,000 or fewer subscribers number 8,097, or 73.6% of all cable systems.¹⁰ These systems, as recognized by the Commission, typically serve less densely populated areas isolated from major television markets.¹¹ Small systems often serve the fringe areas of television markets where the most significant impacts of redefinition will occur. Consequently, many of the burdens associated with market redefinition would fall on these small systems and their subscribers.

Placing additional burdens and costs on these systems and their subscribers runs contrary to Commission policy regarding small systems.¹² The Commission has recognized that small systems typically have unique and higher operating and per subscriber capital cost structures.¹³ Changes in must-carry and retransmission consent obligations due to market redefinition will result in significant and quantifiable costs for these systems. These costs include:

⁸*Id.*

⁹*Id.*

¹⁰*Id.*

¹¹*Small System Order* at ¶ 27.

¹²*Id.* at ¶¶ 4-13.

¹³*Id.* at 55-56.

- Station Identification costs. Due to limited staffing, SCBA members and other small operators often must retain professional assistance to identify potential must-carry stations. These costs are incurred for each television market in which a small operator has systems.¹⁴
- Signal Measurement Costs. After potential must-carry signals are identified, signal strength measurements must be taken at each system's headend. Broadcast stations with insufficient signal strength must be individually notified and given an opportunity to cure the problem in each system. Operators must devote significant time and resources toward measurement and resolving signal strength issues with broadcasters. Often operators must incur costs of repeated signal testing.
- Cost of Retransmission Consent Negotiation. For those signals requiring the procurement of retransmission consent, small operators often must devote substantial time and effort as well as the cost of professional assistance to negotiate retransmission consent agreements. The cost of initial agreements is typically higher than subsequent or renewal agreements.
- Subscriber Notification. Changes in market definition boundaries will result in changes in carriage obligations. Subscribers must receive notice of any changes in channel line-ups. Many small operators use coupon or postcard billing. Any written notice typically requires a separate and costly mailing to subscribers.

¹⁴It is not uncommon for a small operator, even with two systems, to have one system on the edge of one television market and the second on the other side of the border in another television market.

- Headend Changes. Changes in off-air carriage will require changes to headend equipment configuration and may require the procurement of additional equipment and antennas. The Commission has already recognized that incremental headend costs of small systems can result in high per subscriber costs.

Wholesale shifts in market definitions will impose all of these costs on small cable operators serving affected areas. As the *Notice* suggests, no apparent economic or policy benefits will result from adopting DMAs or other new market definition methods.¹⁵ The Commission's proposed rule will avoid imposing the costs and burdens a new method on cable operators, costs and burdens that small cable and its subscribers will disproportionately bear.

C. THE PROPOSED RULES WILL AVOID UNNECESSARY CHANGES IN CHANNEL LINE-UPS AND SUBSCRIBER CONFUSION.

Many cable subscribers were confused by the channel line-up changes implemented by cable operators in response to the 1992 Cable Act. In some cases, operators have had to make further channel substitutions as market definitions have been changed as a result of petitions. If market definitions are again changed, many small systems may face the prospect of wholesale channel line-up changes because their systems will fall within a different television market. Repeated changes of off-air signals unnecessarily disrupt cable subscribers.

D. THE PROPOSED RULES WILL AVOID A CIRCULAR MARKET DEFINITION PROCESS.

The *Notice* recognizes that market definition methods that are based on audience measurement data are "somewhat circular."¹⁶ Both Arbitron ADIs and Nielsen DMAs define

¹⁵*Notice* at ¶ 7.

¹⁶*Id.* at ¶7, n. 9.

markets based on which stations obtain the preponderance of the audience in a county measured by both off-air and cable viewership.¹⁷ Nationally, approximately 65% of all television homes subscribe to cable television. Consequently, the determination of future off-air carriage requirements are heavily influenced by past carriage of off-air signals by cable systems.

The proposed rules will minimize the skewing of television markets definition caused by including the viewing of broadcast signals over cable systems. Market areas have been established with the 1991-1992 Arbitron ADI standard and now can be adjusted on a case-by-case basis. This will result in efficient fine tuning of a system that has generally worked well. Wholesale redefinition, even if it only impacts market fringe areas, serves no policy purpose and would increase administrative burdens and costs on those small systems that would have to accommodate the redefined markets.

III. CONCLUSION

SCBA supports the Commission's "if it isn't broken, don't fix it" approach to this rule making. The proposed rules maintain a now familiar procedure to adjust market definitions on a case-by-case basis. This will accommodate any entities disserved by current market definitions.

Wholesale changes to market definitions will conflict with Commission policies concerning small cable. The changes would result in palpable administrative costs and burdens, principally to operators of small cable systems. The Commission has carefully worked to relieve

¹⁷*Id.*

unnecessary burdens on small systems. By adopting the proposed rule, the Commission will continue to this effort.

Respectfully submitted,

HORIZON CABLEVISION

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CERTIFICATE OF SERVICE

I, Ida Buntin, a secretary at the law firm of Howard & Howard Attorneys, P.C., hereby declare that the Comments of the Small Cable Business Association were sent on the 18th day of January, 1996, via Federal Express, to:

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street NW
Washington DC 20554

and that in a second envelope sent, via Federal Express, directed to Chairman Reed Hundt nine individual envelopes were sent, each containing a copy of the above-referred to document and a copy of the January 18, 1996 letter directed to Mr. Caton. The nine envelopes were addressed as follows:

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c/o Maureen O'Connell
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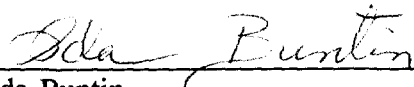
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